No. 98-1636

Supreme Court, U.S.
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In The

Supreme Court of the United States

BLUE CROSS OF CALIFORNIA, CALIFORNIACARE HEALTH PLANS, WELLPOINT HEALTH NETWORKS INC., A California Corporation,

Petitioners,

vs.

CALIFORNIA SUPERIOR COURT; ELIZABETH FARQUHAR and LAURIE WINETT, individually, on behalf of themselves and all others similarly situated,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, Second Appellate District

BRIEF OF AMICI CURIAE AMERICAN FINANCIAL SERVICES ASSOCIATION, CALIFORNIA FINANCIAL SERVICES ASSOCIATION AND CALIFORNIA BANKERS ASSOCIATION IN SUPPORT OF PETITIONERS

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BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS

The American Financial Services Association ("AFSA"), the California Financial Services Association ("CFSA") and the California Bankers Association ("CBA") submit this brief of amici curiae in support of petitioners Blue Cross of California, *et al.* This brief is filed under Rule 37.3(a).[1]

I

INTEREST OF AMICI CURIAE

AFSA is the nation's largest trade association representing market-funded providers of financial services to consumers and small businesses. AFSA's members are engaged in extending $200 billion or about 15 to 20 percent of all consumer credit in the United States.

Members of AFSA provide a broad range of financial products and services to consumers throughout the United States, including credit card, checking account, and deposit account services, home mortgage loans, home equity loans, retail installment financing, automobile and mobile home financing, and lines of credit. AFSA members extend consumer credit in California and other states, many under nationwide programs.

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[1] The parties have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the amici curiae, their members, or their counsel made a monetary contribution to the preparation and submission of this brief. The petitioners are not members of either the AFSA or the CFSA.

Similarly CFSA is a trade association representing non-bank corporations and independent lenders licensed by the State of California.

CBA is the principal trade association representing virtually all of the more than 300 California commercial banks. The total assets of CBA members exceed $470 billion.

Increasingly, AFSA, CFSA and CBA members have included arbitration clauses in their consumer credit agreements in order to provide a quick, efficient mechanism for resolving consumer complaints. Usually, those clauses require binding arbitration through a recognized arbitration service provider such as the American Arbitration Association or JAMS/Endispute. Arbitration under their auspices affords both consumers and creditors the benefit of a speedy, uniform procedure for resolving disputes, irrespective of where the consumer resides.

Most consumer credit transactions involve interstate commerce sufficiently to fall within the broad scope of the Federal Arbitration Act.[2] *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273-274, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995). Moreover, most AFSA, CFSA and CBA members' arbitration clauses specifically invoke the FAA to secure uniformity of arbitration procedure in their multistate or nationwide credit programs. By doing so, AFSA, CFSA and CBA members attempt to assure that the enforceability, procedure and result of arbitration will not turn on the peculiarities of any particular state's law. Providing this sort of uniformity for interstate transactions is one of the FAA's recognized purposes. *Id.* at 271.

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[2] 9 U.S.C. § 1, *et seq.*

Paralleling the trend toward use of arbitration clauses in consumer credit contracts has been a large rise in the number of consumer class actions against all types of defendants, including providers of consumer credit. In particular, putative nationwide classes have recently come into fashion with the plaintiffs' bar, as a spate of recent appellate cases attest. E.g., *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996); *Andrews v. American Tel. & Tel. Co.*, 95 F.3d 1014 (11th Cir. 1996); *Castano v. American Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996); *In re American Medical Systems, Inc.*, 75 F.3d 1069 (6th Cir. 1996); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995); *Canon U.S.A., Inc., v. Superior Court*, 68 Cal.App.4th 1, 79 Cal Rptr.2d 897 (1998). These parallel increases in class litigation and the use of arbitration clauses lend particular and growing importance to the question raised by this case.

On numerous occasions, AFSA, CFSA and CBA have been granted leave to, and have, filed amici curiae briefs in cases raising issues of concern to the consumer finance industry. AFSA, CFSA and CBA have reviewed the Petition for Writ of Certiorari and the California Court of Appeal opinion. They are familiar with the questions raised and with the parties' arguments regarding them.

II

SUMMARY OF ARGUMENT

In this case, the California Court of Appeal held that, in enforcing an arbitration agreement subject to the FAA a state court may – and, if class certification is otherwise appropriate, must – order the arbitration to proceed on a

class-wide basis. *Blue Cross of California v. Superior Court*, 67 Cal.App.4th 42, 78 Cal. Rptr. 2d 779 (1998) ("Opn.").

The Court of Appeal decision commits the fundamental error of confusing procedure *in court* in a proceeding to compel arbitration with procedure *in arbitration* once arbitration has been compelled.

Under the FAA, states have considerable leeway in specifying the procedures to be followed in their own courts in proceedings to enforce arbitration clauses. *Southland Corp. v. Keating*, 465 U.S. 1, 16, n.10, 104 S.Ct 852, 79 L.Ed.2d 1 (1984). No such leeway is accorded states with respect to the procedure to be followed in the arbitration itself. One of Congress' primary purposes in enacting the FAA was to ensure that private agreements to arbitrate would be enforced *according to their terms. Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995).

Giving the parties *more* arbitration, or a different arbitration procedure than they bargained for, offends the FAA and the Congressional purpose underlying it just as much as giving the parties less arbitration than they agreed to. That is just what the Court of Appeal decision accomplishes. It compels arbitration of many claims together according to a procedure to which the parties did not agree. It clearly does *not* enforce the arbitration agreement according to its terms.

The Court of Appeal's error will adversely affect a large and growing number of cases, encouraging forum-shopping and leading to intractable jurisdictional wrangles between federal and state courts enforcing the same arbitration clauses. In recent years, arbitration clauses

have become commonplace in consumer credit contracts. Creditors are, unfortunately, also the target of an increasing number of class actions. How to proceed when a putative class representative has signed an arbitration clause governed by the FAA is, therefore, a question which will arise with increasing frequency.

According to the Court of Appeal, California state courts are to answer that question by ordering the parties to arbitration on a class-wide basis. Yet, as the Court of Appeal also acknowledged, a federal court enforcing the same arbitration agreement under the same statute, the FAA, will reach a dramatically different result. *Champ v. Siegel Trading Co., Inc.*, 55 F.3d 269, 277 (7th Cir. 1995). It will order arbitration to proceed on an individual basis between the named plaintiff and the defendant, barring resolution of the dispute as a class action. *Id.*

This disuniformity of result is directly contrary to another of Congress' principal purposes in enacting the FAA; viz., fostering uniformity in the enforcement of arbitration clauses. It will encourage and reward forum-shopping. It will create the threat of conflicts between state and federal courts enforcing the same arbitration agreement. It will invite a flood of nationwide class action filings in the courts of those states, like California, that adopt the Court of Appeal's unique and discordant rule allowing courts to order arbitration to proceed on a class-wide basis.

For all of these reasons, amici urge the Court to grant the Petition on the issue of whether the FAA precludes a state court from ordering a class-wide arbitration of

claims pursuant to an arbitration agreement governed by that Act.

III

THE COURT OF APPEAL OPINION CONFLICTS WITH THE FAA AND FEDERAL DECISIONS INTERPRETING IT

This case raises an important question of law under the FAA concerning the arbitrability of class claims. The Court of Appeal decision is more than simply erroneous. It reflects a severe divergence between state and federal courts on how the FAA is to be construed.

The Court of Appeal opinion confuses two critically different sets of procedural rules. One set applies to proceedings in state *court* in a suit to compel arbitration under an agreement subject to the FAA. The other set of rules governs the proceedings in *arbitration*.

This Court has shown great reluctance to mandate the former type of procedure for state courts. In *Southland Corp. v. Keating, supra,* 465 U.S. at 16, n.10, the Court expressed this reluctance while at the same time reaffirming the FAA's broad preemption of state arbitration law:

> In holding that the Arbitration Act pre-empts a state law that withdraws the power to enforce arbitration agreements, we do not hold that §§ 3 and 4 of the Arbitration Act apply to proceedings in state courts. Section 4, for example, provides that the Federal Rules of Civil Procedure apply in proceedings to compel arbitration. The

Federal Rules do not apply in such state-court proceedings.[3]

Procedure before the arbitrators is a wholly different matter. This Court has repeatedly said that the FAA leaves the choice of arbitration procedure to the parties. *Mastrobuono v. Shearson Lehman Hutton, Inc., supra,* 514 U.S. at pp. 56-57; *Volt Information Sciences v. Board of Trustees of Leland Stanford Jr. U.,* 489 U.S. 468, 475-476, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989). "Just as [the parties] may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which that arbitration will be conducted." *Volt, supra,* 489 U.S. at p. 479 (citation omitted). "[T]he federal policy is simply to ensure the enforceability, *according to their terms,* of private agreements to arbitrate." *Id.* at 476.[4]

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[3] The California courts have taken full advantage of the latitude afforded the states in establishing state court procedures for enforcing arbitration. *See, e.g., Rosenthal v. Great Western Fin. Securities Corp.,* 14 Cal.4th 394, 405-410, 926 P.2d 1061, 58 Cal. Rptr.2d 875 (1996) (In a California superior court, state law determines whether a judge or jury will decide if the parties had entered into an arbitration agreement.)

[4] Even though the words "in accordance with the terms of the agreement" appear only in section 4 of the FAA, the congressional purpose of ensuring enforcement of arbitration agreements according to their terms underlies the entire FAA and is fully applicable to enforcement of arbitration agreements in state courts. For example, if the arbitration agreement provides for a panel of three arbitrators to decide the dispute, the FAA would preempt any state law, policy or order requiring arbitration before a single arbitrator. Otherwise, Congress' effort to place arbitration clauses on an equal footing with other contractual provisions and to obtain uniformity in their enforcement would be defeated. *See Southland Corp. v. Keating, supra,* 465 U.S. at 14-15.

Thus, the FAA affords states no latitude in devising procedures for the arbitration itself. The rules governing those proceedings are the rules to which the parties agreed. The FAA requires all courts, state and federal, to enforce the parties' agreement as written. California can no more require class-wide arbitration than it could demand arbitration before retired judges or specify that discovery must be permitted in arbitration. Any order setting a different procedure *in arbitration* than the parties agreed to stands as an impermissible obstacle to the FAA's purpose of ensuring that private agreements to arbitrate are *enforced according to their terms.*

The Court of Appeal decision improperly confuses these two quite different types of procedure, incorrectly treating an order for class-wide arbitration as governed by the same principles as the question of whether the Federal Rules of Civil Procedure apply in state court proceeding to enforce arbitration. *Southland Corp. v. Keating*, 465 U.S. at 16, n.10. Class-wide arbitration, however, is a procedure the parties and arbitrator(s) must follow in the arbitration itself. When the parties, themselves, have not agreed to such a procedure, the FAA affords states no discretion to require that procedure.

As the Seventh Circuit aptly stated:

> [T]he Supreme Court has repeatedly emphasized that we must rigorously enforce the parties' agreement as they wrote it, "even if the result is 'piece-meal' litigation." We are thus obliged to enforce the type of arbitration to which these parties agreed, which does not include arbitration on a class basis.

> . . . Since the parties' arbitration agreement does not expressly provide for class arbitration, the district court correctly concluded that it was prohibited from reading such a procedure into these arbitration agreements.

Champ v. Siegel Trading Co., Inc., supra, 55 F.3d at 277 (citation omitted)

Moreover, even if the rules governing preemption of state *court* procedures could be applied to the quite different issue of *arbitration* procedure, the Court of Appeal's opinion would still be wrong. Even the California Supreme Court has recognized that, "a state procedural statute or rule that frustrated the effectuation of [FAA] section 2's central policy would, where the federal law applied, be preempted by the [FAA]." *Rosenthal v. Great Western Fin. Securities Corp., supra,* 14 Cal.4th at 408. The state rule is preempted if it would stand " ' "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' " *Felder v. Casey,* 487 U.S. 131, 138, 108 S.Ct. 2302, 2307, 101 L.Ed.2d 123 (1988). Uniform national application of a federal substantive law requires, in particular, that state courts not apply procedural rules that would "frequently and predictably produce different outcomes . . . based solely on whether the [federal] claim is asserted in state or federal court." *Ibid.*[5]

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[5] Unfortunately, the California Supreme Court declined to apply this rule to the present case. In an earlier decision, *Keating v. Superior Court,* 31 Cal.3d 584, 608-614, 183 Cal. Rptr. 360, 645 P.2d 1192 (1982), *rev'd. in part sub nom., Southland Corp v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed. 2d 1 (1984), the California Supreme Court had actually endorsed the idea of class-wide

The Court of Appeal opinion and its application of a procedure permitting the compulsion of class-wide arbitration violates both of these principles of federal preemption. It erects a California state procedural rule favoring class-wide arbitration as a major obstacle to enforcement of Congress' "primary purpose" of enforcing arbitration agreements *according to their terms.* Instead of the arbitration procedures the parties agreed to, the Court of Appeal opinion foists upon them class arbitration, a procedure not contemplated, mentioned, or agreed upon. As the Seventh Circuit has pointed out:

> "To substitute our own notion of fairness in place of the explicit terms of [the parties'] agreement would deprive them of the benefit of their bargain just as surely as if we refused to enforce their decision to arbitrate." We have a similar situation here. The parties' arbitration agreement makes no mention of class arbitration. For a federal court to read such a term into the parties' agreement would "disrupt[ ] the negotiated risk benefit allocation and direct[ ] [the parties] to proceed with a different sort of arbitration."

Champ v. Siegel Trading Co., Inc., supra, 55 F.3d at 275 (citation omitted).

The Court of Appeal decision is also wrong because it adopts a state procedure that will "frequently and predictably produce different outcomes . . . based solely

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arbitration. *See* n.6, below. Unreviewed, the Court of Appeal opinion is precedent on this issue which all lower California courts must follow. *Auto Equity Sales v. Superior Court,* 57 Cal. 2d 450, 455, 20 Cal. Rptr. 321, 369 P. 2d 937 (1962).

on whether the [federal] claim is asserted in state or federal court." *Felder v. Casey, supra*, 487 U.S. at 138. For the reasons explained below, if the arbitration enforcement proceeding is brought in federal court, arbitration will be enforced as to the individual claims of the named plaintiffs only. The Court of Appeal decision dictates a totally different outcome if the arbitration enforcement proceeding is brought in state court. Assuming the case is otherwise suitable for class certification, a state court would be required to order arbitration on a class-wide basis.

The outcome is different no matter how the arbitrator decides. If arbitration is compelled by the federal court, only the named parties' claims and defenses will be decided. If a state court orders arbitration, the additional claims of putative class members must also be determined by the award. Moreover, the procedure followed in arriving at the award is entirely different, just as class actions in court differ markedly from ordinary litigation.

The Court of Appeal's conclusion that its rule "will not produce different outcomes *on the merits* based solely on whether the claim is asserted in state or federal court" (Opn., 28) is doubly flawed. First, the FAA is concerned with procedure as much as, if not more than, outcome on the merits. The FAA commands enforcement of the arbitration procedure that the parties agreed upon, even if the outcome on the merits would be no different than that which a judge or jury would reach by a different route. By dictating a different arbitration procedure than the parties agreed upon, the Court of Appeal decision requires a different "outcome" that is offensive to and hence preempted by the FAA.

Second, the award in a class-wide arbitration is, in fact, vastly different than the award in an individual arbitration of the same claim. Different claims are being adjudicated with entirely different results for members of the putative class and the defendant(s) alike.

This non-uniformity of results cannot be excused on the ground that the state law procedure (class-wide arbitration) results in more, rather than less, arbitration. The FAA's purpose was not to force parties to arbitrate, but to enforce their agreements to do so. Giving parties more arbitration than they bargained for is just as disruptive of Congress' purpose as affording the parties less arbitration than they agreed upon.

IV

THE COURT OF APPEAL OPINION DESTROYS UNIFORMITY AND ENCOURAGES FORUM SHOPPING CONTRARY TO CONGRESS' INTENT

If the Court of Appeal opinion is allowed to stand, California state courts will enforce an arbitration clause in a radically different manner than the identical clause will be enforced in federal courts in that state or in state or federal courts elsewhere. Non-uniform enforcement of arbitration clauses is one of the evils Congress sought to cure by enacting the FAA. The Court of Appeal's disparate approach will create unnecessary conflicts between state and federal courts and both encourage and reward forum shopping.

Under the Court of Appeal opinion, when a California state court is asked to enforce an arbitration clause

governed by the FAA, it can and must order that arbitration to proceed on a class basis, if the action is otherwise suitable for class certification.

As the Court of Appeal acknowledged (Opn., 16), if the same arbitration clause is enforced in a California federal court, the result will be radically different. The federal court will order the putative class representatives to proceed to arbitration of their individual claims only. No class-wide arbitration can or will be ordered.

The Seventh Circuit has squarely held that "absent a provision in the parties' arbitration agreement providing for class treatment of disputes, a district court has no authority to certify class arbitration." *Champ v. Siegel Trading Co., Inc., supra,* 55 F.3d at 271. A number of federal district court decisions agree. (See Opn., 16.) There is *no* contrary federal court precedent. No published federal decision has ordered or approved class-wide arbitration under the FAA.

There is no reason to believe that California federal district courts or the Ninth Circuit will break company with the Seventh Circuit and the other, unanimous federal authority on this issue. The Seventh Circuit's holding is based, in part, on the all-but-unanimous federal case law holding that absent an express contractual provision permitting it, federal courts cannot "require consolidated arbitration, even where consolidation would promote the expeditious resolution of related claims." *Id.* at 274-275.

The Ninth Circuit adheres firmly to the no-consolidation rule. *Weyerhaeuser Co. v. Western Seas Shipping Co.,* 743 F.2d 635, 637 (9th Cir. 1984). In doing so, the Ninth

Circuit pointed out that federal courts must enforce arbitration clauses according to their terms; arbitration is a creature of contract, in effect, a specialized type of forum selection clause that not only chooses the site of litigation " 'but also the procedure to be used in resolving the dispute.' " *Ibid.* There is no reason to think that the Ninth Circuit would abandon the rationale it stated in *Weyerhaeuser* and hold that federal district courts can force class-wide arbitration on parties whose contracts do not explicitly authorize that procedure.

That being so, the Court of Appeal's contrary conclusion will inevitably lead to innumerable conflicts between California state and federal courts. A savvy class action plaintiff's attorney will file suit in state court if his client has signed an arbitration clause. The plaintiff's attorney will then demand class-wide arbitration under the authority of the Court of Appeal decision in this case. Upon the defendant's refusal to comply, the plaintiff's attorney will move, in state court, for an order compelling arbitration class-wide.

If it can find an adequate basis for federal jurisdiction, the defendant will counter by filing a separate action under the FAA in federal court, seeking to compel arbitration on an individual basis in accordance with the Ninth Circuit's decision in *Weyerhaeuser*. The federal district court cannot abstain. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 18-22, 103 S.Ct. 297, 74 L.Ed.2d 765 (1983); *Metropolitan Life v. Lockette*, 155 F.3d 1339, 1341 (11th Cir. 1998). The district court will issue an order compelling individual arbitration. That order will directly conflict with the order the California

state court will issue in the same controversy, directing arbitration on a class-wide basis.

Neither order compelling arbitration is an appealable, final order, 9 U.S.C. § 16; *In re Pisgah Contractors, Inc.*, 117 F.3d 133, 135 (4th Cir. 1997); Cal. Code of Civ. Proc., § 1294; *United Firefighters of Los Angeles v. City of Los Angeles*, 231 Cal.App.3d 1576, 1581-1582 (1991), so neither will operate as res judicata until after completion of the arbitration. But how is the arbitration to be completed: on an individual basis or a class basis? Which court order will the parties and the arbitrator obey?

Obviously, this type of conflict between state and federal courts is highly undesirable for the courts, the arbitrators, and the parties. It is exactly the type of conflict that Congress sought to eliminate by enacting the FAA. Rejecting the claim that the FAA is solely procedural and applicable only to federal courts, this Court observed that if this interpretation were correct

> claims brought under the California Franchise Investment Law are not arbitrable when they are raised in state court. Yet it is clear beyond question that if this suit had been brought as a diversity action in a federal district court, the arbitration clause would have been enforceable. The interpretation given to the Arbitration Act by the California Supreme Court would therefore encourage and reward forum shopping. We are unwilling to attribute to Congress the intent, in drawing on the comprehensive powers of the Commerce Clause, to create a right to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted. . . . Such an

> interpretation would frustrate congressional intent to place "[a]n arbitration agreement . . . upon the same footing as other contracts, where it belongs."

Southland Corp. v. Keating, supra, 465 U.S. at 15-16 (citations & fns. omitted).

The Court of Appeal's decision in this case will "encourage and reward forum shopping" in just the same manner. Plaintiffs will flock to California state courts. Defendants will make every effort to remove cases to federal court or commence independent actions there to compel arbitration. It is an invitation to a jurisdictional nightmare of the same type, but potentially even more harmful than that quashed by this Court's decision in *Southland Corp. v. Keating.*[6]

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[6] In *Southland v. Keating,* this Court reversed in part the California Supreme Court's decision in *Keating v. Superior Court,* supra, 31 Cal.3d at, 608-614, that certain state franchise claims could not be arbitrated. The Court did not address the remaining portion of *Keating v. Superior Court* which approved class-wide arbitration. This Court found the issue had not been properly preserved below. *Southland Corp. v. Keating, supra,* 465 U.S. at 8-9,-17. This case presents no such procedural obstacle to correcting the *Keating* court's second error. *Keating* based its support for class-wide arbitration on two pillars, each of which has been undermined by later case law. First, *Keating* held that California's public policy favoring consumer class actions overrides the parties' agreement to arbitration by a different means. The FAA preempts state policies of this type, as this Court's later decisions hold. *E.g., Allied-Bruce Terminix Cos. v. Dobson, supra,* 513 U.S. at 273-274. Second, *Keating* relied, by analogy, on lower federal court cases permitting a court to order consolidation of independent arbitration proceedings. The tide of decisions has now reversed on that shore as well. Every

Nor will the forum shopping and jurisdictional wrangle be limited to California state and federal courts. Nationwide class actions have become increasingly popular with the plaintiffs' bar. States such as California permitting class-wide arbitration will naturally attract nationwide class actions that might be filed elsewhere but for the parties' agreement to arbitrate their disputes – once again, encouraging and rewarding forum shopping.[7]

Alabama's recent experience with class actions provides a dramatic illustration of the likely effect of the Court of Appeal opinion. For several years in the early 1990's Alabama's courts were viewed as particularly receptive to class actions in general and nationwide class actions in particular. A veritable flood of putative national class suits were filed in Alabama courts, *Ex Parte First National Bank of Jasper*, 717 So.2d 342, 347 (Ala. 1997), until the Alabama Supreme Court recently brought Alabama law into conformity with class action precedents in other states and the federal courts. *Id.; see also Ex Parte Green Tree Financial Corp.*, 723 So.2d 6 (Ala. 1998).[8]

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federal circuit but the first has now held that a court has no power to order consolidation of arbitrations unless the parties expressly agree to it. Opn., 21; *but cf. New England Energy Inc. v. Keystone Shipping Co.*, 855 F.2d 1, 3 (1st Cir. 1988).

[7] At least one other state, Pennsylvania, appears to have adopted a rule permitting state-wide arbitration even in situations governed by the FAA. *Dickler v. Shearson Lehman Hutton, Inc.*, 408 Pa. Super. 286, 596 A.2d 860 (1991). If decisions like that of the Court of Appeal and the *Dickler* court remain undisturbed, there is nothing to prevent other state courts from straying from the FAA's mandate for uniformity.

[8] Interestingly, when recently confronted with the very question raised in the present case, the Alabama Supreme

The concern is not that California will be inundated with class actions; it already is. The real problem is that significant arbitration rights will turn strictly on the choice of forum. The national arbitration programs designed by AFSA, CFSA and CBA members to deliver a uniform result to their customers will produce radically different arbitration proceedings based solely on where the first class claimant chooses to proceed. This lack of uniformity in enforcement is what Congress sought to cure by enacting the FAA.

V

CONCLUSION

The Court should step in now, grant certiorari in this case, and re-establish the uniformity that the FAA was enacted to achieve. For the reasons stated above, AFSA, CFSA, CBA and their members urge the Court to grant

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Court, citing *Champ v. Siegel Trading Co., Inc., supra,* declined to allow class-wide arbitration. *Med Center Cars, Inc. v. Smith* 727 So.2d 9, 20 (Ala. 1998), ("[W]e conclude that to require class-wide arbitration would alter the agreements of the parties, whose arbitration agreements do not provide for class-wide arbitration.")

the petition for writ of certiorari and reverse the Court of Appeal opinion.

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